

# INDEX

	Page
Opinions below.....	1
Jurisdiction.....	1
Question presented.....	2
Statute and regulations involved.....	2
Statement.....	3
Argument.....	4
Conclusion.....	8
Appendix.....	9

## CITATIONS

### Cases:

<i>Hagner v. United States</i> , 285 U. S. 427.....	7
<i>Hopper v. United States</i> , 142 F. 2d 181.....	5
<i>Johnson v. United States</i> , 294 Fed. 753.....	7
<i>Morgan v. United States</i> , 149 F. 2d 185, certiorari denied, 326 U. S. 731.....	5
<i>United States v. Fried</i> , 149 F. 2d 1011, certiorari denied, 326 U. S. 756.....	4
<i>United States v. Polakoff</i> , 112 F. 2d 888, certiorari denied, 311 U. S. 653.....	5
<i>United States v. Steiner</i> , 152 F. 2d 484, certiorari denied, 327 U. S. 789.....	5

### Statute:

Emergency Price Control Act of 1942, as amended (56 Stat. 23, 50 U. S. C. App., Supp. V, 901, <i>et seq.</i> ):	
Section 4(a).....	6, 9
Section 205(b).....	6, 9

### Regulation:

Rent Regulation for Hotels and Rooming Houses, 9 F. R. 11322:	
Section 2 (a).....	6, 10
Section 4 (a).....	10
Section 4 (b).....	11
Section 4 (c).....	11
Section 4 (g).....	11
Section 5.....	5, 12
Section 7.....	5, 12
Section 11.....	13
Section 13 (a).....	6, 13



# **In the Supreme Court of the United States**

OCTOBER TERM, 1946

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No. 1160

ZEREF A MALOOF, PETITIONER

v.

UNITED STATES OF AMERICA

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES CIRCUIT COURT OF APPEALS FOR THE NINTH  
CIRCUIT*

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**BRIEF FOR THE UNITED STATES IN OPPOSITION**

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## **OPINIONS BELOW**

The opinions of the circuit court of appeals (R. 14-18, 20-21) are reported at 159 F. 2d 62.

## **JURISDICTION**

The original judgment of the circuit court of appeals was entered August 29, 1946 (R. 13). That judgment was vacated and a petition for rehearing granted on October 11, 1946 (R. 18). The final judgment of the circuit court of appeals, after rehearing, was entered January 20, 1947 (R. 21), and a second petition for rehearing

was denied February 26, 1947 (R. 22). The petition for a writ of certiorari was filed March 26, 1947. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules 37 (b) (2) and 45 (a) of the Federal Rules of Criminal Procedure.

#### QUESTION PRESENTED

The information charged that petitioner violated the Emergency Price Control Act and rent regulations promulgated thereunder by renting at \$5 a night a room for which the legal ceiling price was \$2. The sufficiency of the information was not challenged at the trial. The question is, whether the information was fatally deficient because (1) it did not allege that petitioner was a landlord or other person of the class governed by the Act and regulations, and (2) it alleged merely a legal conclusion as to the legal ceiling price rather than the facts upon which such a conclusion might be predicated.

#### STATUTE AND REGULATIONS INVOLVED

The pertinent provisions of the Emergency Price Control Act of 1942, and the Rent Regulation for Hotels and Rooming Houses (hereinafter referred to as the Regulation), promulgated under the Act, are set forth in the Appendix *infra*, pp. 9-13.

## STATEMENT

On December 28, 1945, an information in one count was filed in the District Court for the Northern District of California charging (R. 2-3)—

That Zerefa Maloof, (hereinafter called "said defendant") on or about the 15th day of December, 1945, in the City and County of San Francisco, State of California, in the Southern Division of the Northern District of California, and within the jurisdiction of this Court, did unlawfully, wilfully and knowingly rent to B. E. Wood and R. D. Sullivan a certain room in a hotel and rooming house, to wit, Room No. 11, Hotel Rosslyn, 44 Eddy Street, City and County of San Francisco, State of California, for a rental price of \$5.00 per night for two persons, which said sum of \$5.00 per night for two persons was higher than the maximum price fixed by law, said maximum price then and there being \$2.00 per night for two persons, as the said defendant then and there well knew. (Regulations for Hotels and Rooming Houses, 9 F. R. 11322.)

Petitioner was found guilty by the trial court and she was sentenced to imprisonment for 60 days and to pay a fine of \$300 (R. 3-4). On appeal to the Circuit Court of Appeals for the Ninth Circuit, the conviction was affirmed (R. 21).

## ARGUMENT

At the outset, it should be noted that since the record does not include any of the trial proceedings or the evidence (see R. 8-9), it must be assumed that the proof fully supported the charges set forth in the information, and that the sufficiency of the information or of the evidence was not challenged at the trial.

Petitioner now contends, as she did in the circuit court of appeals (see R. 7), that the information was fatally deficient because (1) it failed to allege that she was one of the class of persons governed by the Act and the Regulation, i. e., a landlord (Pet. 22-28), and (2) it merely asserted a legal conclusion as to the ceiling price for the hotel room and failed to allege the facts necessary to support that conclusion (Pet. 28-41).

These contentions are patently frivolous. As to petitioner's claim that the information was void for failure to allege facts supporting the allegation that \$2 was the legal ceiling price for the room, the courts have almost uniformly upheld indictments or informations which were less informative than the one involved here and in circumstances where determination of the applicable legal price ceilings was far more difficult. Thus, informations merely alleging sales at prices in excess of ceiling prices, without specifying the ceiling prices, have been upheld. *United States v. Fried*, 149 F. 2d 1011, 1013 (C. C. A. 2), cer-

tiorari denied, 326 U. S. 756; *Morgan v. United States*, 149 F. 2d 185, 187 (C. C. A. 5), certiorari denied, 326 U. S. 731. And in *United States v. Steiner*, 152 F. 2d 484, 486 (C. C. A. 7), certiorari denied, 327 U. S. 789, an indictment alleging a sale in excess of a specifically stated lawful maximum price, as here, was sustained. In all of these cases the ceiling prices were derived by application of formulae set forth in the applicable O. P. A. regulations or by reference to a competitor's price filed pursuant to a regulation. In the instant case, however, the ceiling price was far more easily determinable, for, as the court below noted (R. 16-17), the maximum rent chargeable for any room was required to be filed by the landlord in the O. P. A. area rental office and once a maximum rent had been so filed it could not be changed except by formal order. See Sections 7 and 5 of the Regulation, *infra*, p. 12. Accordingly, it is clear that the information here was not void by reason of the omission of the facts upon which the allegation of the \$2 ceiling price was predicated, particularly since the applicable regulation was specifically cited. In any event, even assuming *arguendo* that petitioner needed more information on the method whereby the legal maximum rate was established in order to prepare her defense, she could have obtained it by a request for a bill of particulars. See opinion below at R. 17. Cf. *Hopper v. United States*, 142 F. 2d 181, 185 (C. C. A. 9); *United States v.*

*Polakoff*, 112 F. 2d 888, 890 (C. C. A. 2), certiorari denied, 311 U. S. 653.

Petitioner's contention that the information should have alleged that she was a landlord is predicated on her argument that the rent control provisions apply only to landlords or their agents, as defined in Section 13 (a) (9) of the Regulation (*infra*, p. 13). However, as the court below stated (R. 16), the prohibitions against demanding or receiving rents in excess of the established maxima apply in terms to "any person." See Sections 4 (a) and 205 (b) of the Act, *infra*, pp. 9-10; Sections 2 (a) and 13 (a) (5) of the Regulation, *infra*, pp. 10, 13. While normally only landlords or their authorized agents are affected by the rent control provisions, it does not follow—and the language of the provisions so demonstrates—that the law applies only to such persons.<sup>1</sup> There are many reasons why these provisions may have been deliberately drawn to apply to all persons rather than merely to landlords or their authorized agents. A person shown to have rented or offered to rent particular housing accommodations must be deemed to have thereby asserted that he has the authority to rent. Consequently, it would be impractical to impose upon the Government the burden in every case of show-

<sup>1</sup> The Regulation itself defines the term "landlord" (Section 13 (a) (9), *infra*, p. 13) to include persons "receiving or entitled to receive rent" so that a person receiving rents, whether legally authorized, comes within that definition.



ing that in fact the offender is a landlord or an authorized agent, for proof of this character might involve lengthy disputes essentially collateral to the main issue. Moreover, the inflationary evil against which the controls were directed would not be different by reason of any possible question as to the right or authority of the offender to rent particular premises.

*Johnson v. United States*, 294 Fed. 753 (C. C. A. 9), upon which petitioner relies, is plainly inapposite. There the defendant was charged with possession of narcotics without having registered under a federal statute. The court in that case held that the indictment should have shown the factual basis upon which it was concluded that the defendant was a person required to register, since registration was required in eight different possible situations, and therefore in the absence of a specific allegation showing that he was within one particular category, he would not know the essentials of the charge of illegal possession. 294 Fed. at 755. The instant case is far different. Even assuming, *arguendo*, that only landlords or their agents can violate the rent control provisions, the absence of an averment that petitioner was such a person could not in any conceivable way have prejudiced her defense, for she was fully aware of her own status and the information set forth all the necessary details to inform her of the violation charged against her. In this posture, the situation is within the doctrine of *Hagner v.*

*United States*, 285 U. S. 427, 433, in which this Court said that "Upon a proceeding after verdict at least, no prejudice being shown, it is enough that the necessary facts appear in any form, or by fair construction can be found within the terms of the indictment." Certainly, it was inferrable from the information that since petitioner was charged with renting certain premises she was the landlord or an authorized agent.

#### CONCLUSION

The judgment below is clearly correct and no conflict of decisions is involved. Accordingly, we respectfully submit that the petition for a writ of certiorari should be denied.

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APRIL, 1947

## APPENDIX

The Emergency Price Control Act of 1942 (56 Stat. 23, 50 U. S. C. App., Supp. V, 901, et seq.) provides in pertinent part:

SEC. 4 (a) [50 U. S. C. App., Supp. V, 904 (a)] It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order, or requirement under section 202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

\* \* \* \* \*

SEC. 205 (b) [50 U. S. C. App., Supp. V, 925 (b)] Any person who willfully violates any provision of section 4 of this Act, and any person who makes any statement or entry false in any material respect in any document or report required to be kept or filed under section 2 or section 202, shall, upon conviction thereof, be subject to a fine of not more than \$5,000, or to imprisonment for not more than two years in the case of a violation of section 4 (c) and for not more than one year in all

other cases, or to both such fine and imprisonment. Whenever the Administrator has reason to believe that any person is liable to punishment under this subsection, he may certify the facts to the Attorney General, who may, in his discretion, cause appropriate proceedings to be brought.

The Rent Regulation for Hotels and Rooming Houses, promulgated pursuant to the Emergency Price Control Act, provides in pertinent part (9 F. R. 11322):

SEC. 2 *Prohibition*—(a) *Prohibition against higher than maximum rents.* Regardless of any contract, agreement, lease or other obligation theretofore or hereafter entered into, no person shall demand or receive any rent for or in connection with the use or occupancy on and after the effective date of regulation of any room in a hotel or rooming house within the Defense-Rental Area higher than the maximum rents provided by this regulation; and no person shall offer, solicit, attempt, or agree to do any of the foregoing. Lower rents than those provided by this regulation may be demanded or received.

\* \* \* \* \*

SEC. 4 *Maximum rents.* This section establishes separate maximum rents for different terms of occupancy (daily, weekly or monthly) and numbers of occupants of a particular room. Maximum rents for rooms in a hotel or rooming house (unless and until changed by the Administrator as provided in section 5) shall be:

(a) *Rented or regularly offered during maximum rent period.* For a room rented or regularly offered for rent during the thirty days ending on the maximum rent

date, the highest rent for each term or number of occupants for which the room was rented during that thirty-day period, or, if the room was not rented or was not rented for a particular term or number of occupants during that period, the rent for each term or number of occupants for which it was regularly offered during such period.

(b) *First rented or regularly offered after maximum rent period.* For a room neither rented nor regularly offered for rent during the thirty days ending on the maximum rent date, the highest rent for each term or number of occupants for which the room was rented during the thirty days commencing when it was first offered for rent after the maximum rent date; or, if the room was not rented or was not rented for a particular term or number of occupants during that period, the rent for each term or number of occupants for which it was regularly offered during such period.

(c) *First rent after maximum rent date where no maximum rent established under (a) or (b).* For a room rented for a particular term or number of occupants for which no maximum rent is established under paragraphs (a) or (b) of this section the first rent for the room after the maximum rent date for that term and number of occupants, but not more than the maximum rent for similar rooms for the same term and number of occupants in the same hotel or rooming house.

\* \* \* \* \*

(g) *Rent fixed by order of Administrator.* For a room for a particular term or number of occupants for which no maximum rent has been established under any

other provision of this regulation, the rent fixed by order of the Administrator as provided in this paragraph (g).

The Administrator at any time on his own initiative or on petition of the landlord may enter an order fixing the maximum rent and specifying the minimum services for a room for a particular term or number of occupants for which no maximum rent has been established prior to issuance of the order under any other provision of this regulation. Such maximum rent shall be fixed on the basis of the rent generally prevailing in the Defense-Rental Area for comparable housing accommodations on the maximum rent date.

SEC. 5 *Adjustments and other determinations.* In the circumstances enumerated in this section, the Administrator may issue an order changing the maximum rents otherwise allowable or the minimum services required.

\* \* \* \* \*

SEC. 7 *Registration and records—(a) Registration statement.* On or before the date specified in Schedule A of this regulation every landlord of a room rented or offered for rent shall file a written statement on the form provided therefore, containing such information as the Administrator shall require, to be known as a registration statement. Any maximum rent established after the effective date of regulation under paragraphs (b) or (c) of section 4 shall be reported either on the first registration statement or on a statement filed within 5 days after such rent is established.

\* \* \* \* \*

· SEC. 11 *Procedure.* All registration statements, reports and notices provided for by this regulation shall be filed with the Area Rent Office. All landlord's petitions and tenant's applications shall be filed with such office in accordance with Revised Procedural Regulation No. 3 (Sections 1300.201 to 1300.259a, inclusive).

\* \* \* \* \*

SEC. 13 *Definitions.* (a) When used in this regulation the term:

\* \* \* \* \*

(5) "Person" includes an individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative of any of the foregoing, and includes the United States or any agency thereof, or any other government, or any of its political subdivisions, or any agency of any of the foregoing.

(9) "Landlord" includes an owner, lessor, sublessor, assignee or other person receiving or entitled to receive rent for the use or occupancy of any room, or an agent of any of the foregoing.